

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Michael E. Moon,

Case No. 1:18-cv-2480

Petitioner,

v.

ORDER

Tim Shoop, Warden,

Respondent.

Before me is the April 20, 2021 Report and Recommendation of Magistrate Judge Kathleen B. Burke, (Doc. No. 10), recommending I dismiss the petition of Petitioner Michael E. Moon for a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). Judge Burke recommends I conclude Moon's petition is barred by the applicable statute of limitations and that Moon fails to demonstrate he is entitled to tolling of the limitations period.

Under the relevant statute, "[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court." 28 U.S.C. § 636(b)(1); *United States v. Walters*, 638 F.2d 947, 949 (6th Cir. 1981). More than 14 days have passed since Judge Burke issued her Report and Recommendation and Moon has not filed any objections.

The failure to file written objections to the Magistrate Judge's Report and Recommendation constitutes a waiver of a determination by the district court of an issue covered in the report.

Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *see also Walters*, 638 F.2d at 950; *Smith v. Detroit Fed'n of Teachers, Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987) ("[O]nly those

specific objections to the magistrate's report made to the district court will be preserved for appellate review").

On August 14, 2020, the Cuyahoga County Court of Common Pleas granted Moon's motion for judicial release. A petitioner who no longer is serving a term of imprisonment bears the burden of demonstrating the petitioner's request for habeas relief is not moot. *See, e.g., Townsend v. Vashinder*, 365 F. App'x 657, 660 (6th Cir. 2010) (citing *Demis v. Sniezek*, 558 F.3d 508, 510 (6th Cir. 2009)).

Moon has not submitted any filings in this case since he was granted judicial release. Even if I assume his case is not moot, however, I conclude his petition is barred by the statute of limitations.

Following my review of the Magistrate Judge's Report and Recommendation, I accept Judge Burke's recommendation and conclude Moon's petition is barred by the statute of limitations. Therefore, I dismiss his petition for habeas relief under § 2254. Further, I certify there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge